IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6035 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHARAT ELECTRIC COMPANY

Versus

JOSEPH DOMNIC

Appearance:

None present for parties.

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 14/07/2000

ORAL JUDGEMENT

#. Perused the Special Civil Application.

#. The petitioner prayed in the Special Civil Application for following reliefs :-

(A) to command the respondents to not to cancel the concluded contract whereby the petitioner's bid for purchasing of V.C.R. Parts listed at Serial No.18 in the Public Notice (Annexure-A) at Rs.14 lacs has been accepted by the respondents and to hand over to the petitioner the V.C.R. Parts sold to the petitioner at the Public Auction held on 21st August 1991 on the petitioner's payment of balance amount of Rs.10.5 lacs

(B) Pending the hearing and final disposal of this petition to restrain the respondents from handing over or parting with possession the V.C.R. Parts listed at Sr. No.18 in the Auction Notice (Annexure-A) sold or agreed to be sold to the petitioner in the Public auction held on 21st August 1991;

(C) to grant such other and further relief as may be deemed just and proper;

#. In response to the Public Notice (Annexure-A) the petitioner has given his bid for the items at Sr. No.18. Initially there were five bidders. Thereafter different parties gave their bids and the petitioner gave the highest bid for Rs.14 lacs. As per the terms of the auction the successful bidder has to pay 25% of the highest bid on the spot. However, the respondent informed the petitioner's representative that if the petitioner deposits a sum of Rs.1 lac at that stage and deposits the balance amount within a period of one week or so, the same shall be regarded as in order. Accordingly, an amount of Rs.1 lac was paid by the petitioner's representative by D.D. on the very same day and the said draft of Rs.1 lac has been accepted by the respondents. The petitioner was required to pay balance amount of Rs.2.5 lacs within a period of one week. The petitioner's partner has taken out a demand draft of Rs.2.5 lacs and proceeded to visit Kandla. On 27.8.1991 he deposited that draft with the respondents. The partner of the petitioner requested the officer of the respondent to intimate him the time within which he should pay the balance amount. At this stage he was told that they shall have to meet the respondent No.2. Accordingly, the partner of the petitioner met respondent No.2. He was told by the respondent No.2 that after the

bid was knocked down in favour of the petitioner on 21.8.91, 23.8.91 the respondent received a letter from another bidder from Ahmedabad wherein the said party has shown its willingness to lift these goods at Rs.16 lacs. The respondent asked the partner of the petitioner to raise the bid to the level of Rs.16 lacs otherwise it shall stand cancelled and goods would be handed over to the Ahmedabad party. It is the case of the petitioner that he prayed in writing for grant of some time to think over the matter. However, the partner of the petitioner informed that the petitioner is ready to raise the bid of the purchase of the goods at Rs.16 lacs. It is a different matter that in the Special Civil Application the petitioner has come up with the case that the writing has been taken by the respondent from the partner of the petitioner under coercion or so.

#. This petition was placed in the court for hearing on 3.9.91 and ad-interim relief in terms of para 7(B) has been granted and further stay of holding of auction again or disposing of VCR parts in question till further orders. The writ petition was admitted on 9.12.91 i.e. after more than three months of the date on which notice was issued to the respondents. The respondents have not even bothered to file reply to the Special Civil Application. That is not the end but after admission also the respondents have not cared to file the reply to the Special Civil Application. The result of the nonfiling of the reply to the Special Civil Application is that whatever the averments made by the petitioner on the facts are to be taken uncontroverted.

#. The petitioner has not produced any material on the record except mere word in the pleading that the letter of raising the bid from Rs.14 lacs to Rs.16 lacs has been taken by the respondent from the partner by coercion or so. Document at Annexure-C which has been given by the petitioner to the respondent is there on the record of the Special Civil Application. After going through the contents of this document I am satisfied that it is difficult to accept that this writing was given under the coercion, undue influence or so by the respondents. In the writ petition the name of the partner who was given this writing has not been mentioned. From the document Annexure-C also it is difficult to find out the name of the partner of the petitioner. In para No.2.5 of the Special Civil Application, the petitioner only mentioned "the petitioner's another partner". In para No.2.6 again it is stated that "petitioner's said partner". So, the name of the said partner has not been given. For nondisclosure of the name of the partner it is difficult

to take that Nilesh Shah is the partner of the petitioner, who had gone there to the office of the respondent at Kandla on that date i.e. 27.8.91. The affidavit of that partner was not filed in this Special Civil application and it is difficult to say what to accept the Annexure-C was given by one of the partners of the petitioner-firm under coercion or threat of the respondents. The writing at Annexure-C taken to be a voluntary offer given by the partner of the petitioner-firm and it is binding. So this prayer of the petitioner that the respondents to be directed to hand over to the petitioner the VCR parts which were subject matter of the Auction Notice (Annexure-A) for Rs.14 lacs is difficult to accept. However, the petitioner is entitled to take these goods for Rs.16 lacs.

#. The Special Civil Application is disposed of in terms that in case the balance of Rs.16 lacs is paid within a period of one month from the date of receipt of the writ of this order by thepetitioner to the respondents, within 15 days next the pats of the VCR which are subject matter of this petition be delivered to the petitioner.

The Special Civil Application and Rule stand disposed of in the aforesaid term. In the facts of this case, no order as to costs.

(S.K.Keshote, J.)

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